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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,899	01/14/2004	Randall L. Powers	100.401US01	3088

34206 7590 07/11/2008  
FOGG & POWERS LLC  
10 SOUTH FIFTH STREET  
SUITE 1000  
MINNEAPOLIS, MN 55402

EXAMINER
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BOAKYE, ALEXANDER O

ART UNIT	PAPER NUMBER
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2616

NOTIFICATION DATE	DELIVERY MODE
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07/11/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@fogglaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/756,899	<b>Applicant(s)</b> POWERS, RANDALL L.	
	<b>Examiner</b> ALEXANDER BOAKYE	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 36-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8, 14-34 and 36-48 is/are allowed.
- 6) ☒ Claim(s) 9-12 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over LOO (WO 99/26448) in view of Jason, Jr. (US Patent # 7,355,971).

Regarding claim 9, Loo discloses in Figs. 1-3 a method for automatically adapting to statically varying packet size, the method comprising : receiving a stream of bytes over a physical medium (column 11, lines 1-2). LOO differs from the claimed invention in that LOO does not disclose determining a static packet size from the bytes in the stream of bytes and using the determined packet size to process packets from the received byte stream. However, Jason discloses determining a static packet size from the bytes in the stream of bytes and using the determined packet size to process packets from the received byte stream (column 3, lines 23-37 and lines 1-6 of the abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to incorporate the teachings of Jason into the system of LOO in order to be able to reduce packet congestion.

Regarding claim 10, LOO teaches that determining a packet size comprises identifying first and second boundaries of a packet based on bytes in the received stream of bytes (column 11, lines 21-25).

Claim 11 is met as previously discussed with respect to claim 8.

Regarding claim 12, Loo teaches that determining a packet size further comprises identifying N additional boundaries separated by the same number of bytes (column 11, lines 21-25).

### ***Allowable Subject Matter***

2. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-8, 14-19, 20-25, 26-30, 31-34, 36-42, 43-48 are allowable.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-34, 36-48 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Boakye whose telephone number is (571) 272-3183. The examiner can normally be reached on M-F from 8:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (571) 272-3179. The Fax number is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or PUBLIC PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Electronic Business Center (EBC) numbers at 866-217-9197 and 703-305-3028.

/ALEXANDER BOAKYE/

Examiner, Art Unit 2616 (Temporary Partial Signatory)

7/6/08